

WEYERHAEUSER CO.

IBLA 84-804

Decided November 8, 1985

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting color-of-title application ES 33691.

Affirmed.

1. Color or Claim of Title: Generally--Color or Claim of Title:
Applications

One who files a Class 2 color-of-title application is required by 43 U.S.C. § 1068(b) (1982) to establish, inter alia, that the tract applied for has been held in good faith and in peaceful, adverse, possession by the claimant, his ancestors or grantors, under claim or color of title for a period commencing not later Jan. 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units. The statute does not give BLM the authority to grant a Class 2 application where the first document upon which the claim or color of title is based is dated after Jan. 1, 1901.

APPEARANCES: L. E. Gosa, Esq., Vernon, Alabama, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Weyerhaeuser Company has appealed from the June 26, 1984, decision of the Eastern States Office, Bureau of Land Management (BLM), denying Class 2 color-of-title application for approximately 13 acres of land in sec. 18, T. S., R. 16 W., Huntsville Meridian, Alabama. Appellant's application indicates it is the record title owner of the land for which it paid over \$1,100. Appellant did not learn it lacked clear title to the land until May 26, 1983. No cultural and structural improvements are claimed, nor has the land been cultivated.

[1] The Color of Title Act requires a Class 2 applicant to show:

* * * that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units * * *.

43 U.S.C. § 1068(b) (1982). BLM rejected appellant's application for failure to show payment of taxes from 1901 through 1927 and from 1932 through 1934. The application was also rejected because the chain of title did not commence until December 7, 1905.

Appellant explains the tax records prior to 1928 had been destroyed and other tax records have been lost, making it impossible to find the documents necessary to establish payment of taxes for the years included in BLM's decision. As for the failure to show title from January 1, 1901, appellant asserts that while this requirement may have been reasonable in 1928, when the Color of Title Act became law, it seems unreasonable now, particularly in a case such as this where the applicant can show record title for over 78 years. Nevertheless, the requirement that an applicant show a claim or color of title for a period commencing no later than January 1, 1901, is a requirement imposed by statute. See Hal H. Memmott, 77 IBLA 399 (1983); Estate of John C. Brinton, 71 IBLA 160 (1983). This Department has no authority to waive such a statutory requirement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

